

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CRAIG A. ANDERSON and  
JAMES T. GRIGSBY

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Appeal No. 96-2771  
Application 08/239,334<sup>1</sup>

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ON BRIEF

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Before McCANDLISH, Senior Administrative Patent Judge, LYDDANE  
and CRAWFORD, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's refusal to allow of claim 13, which was amended subsequent to final rejection (Paper No. 8). Claims 1-12 have been canceled.

Appellants claimed invention is directed to the combination of a window having a nail fin secured to the frame of the window. The nail fin includes a fold line which allows the

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<sup>1</sup> Application for patent filed May 6, 1994.

nail fin to be folded so that the nail fin lies flush to the window frame. Claim 13 is exemplary of the subject matter on appeal and recites:

13. In combination:

a window including a frame;

said frame having a kerf formed therein;

and at least one foldable metal nail fin operatively secured to said frame;

said nail fin comprising a substantially flat body portion and an inner end portion which extends transversely from said body portion for insertion into said kerf whereby said body portion is normally positioned flush against said frame without objectionably protruding therefrom so that said frame and said nail fin may be shipped to a building site; said body portion of said nail fin having an indented fold line formed therein adjacent said inner end portion so that said body portion may be selectively folded, about said fold line, from its normally flush position adjacent said frame to a position wherein said nail fin extends outwardly from said window frame for nailing to a building surface extending around a window opening created therein;

the metal construction of said nail fin causing said nail fin to remain in its said flush position until manually folded outwardly to its nailing position;

the metal construction of said nail fin causing said nail fin to remain in its nailing position after it has been folded outwardly thereto.

#### THE REFERENCE

The following reference was relied on by the examiner:

Kessler

4,999,957

Mar. 19, 1991

#### THE REJECTION

Claim 13 stands rejected under 35 U.S.C. § 103 as being unpatentable over Kessler.

Rather than reiterate the examiner's full explanation of the basis for the above-noted rejection and the conflicting viewpoints advanced by the examiner and the appellants regarding the rejection, we make reference to the examiner's answer (Paper No. 12) for the examiner's reasoning in support of the rejection and to appellants' brief (Paper No. 11) and reply brief (Paper No. 13) for appellants arguments' thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claim, to the applied prior art reference and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that prior art relied on by the examiner is insufficient to establish the obviousness of the subject matter of appellants' claim 13 under 35 USC § 103. Our reasoning for this determination follows.

Kessler discloses, as depicted in Figures 1 and 2 a nail fin 12 which is operatively secured to the frame 11 of a window 2. The nail fin has a substantially flat body portion 14 and an inner end portion 20 for insertion onto a kerf 21. The nail fin

includes a fold line 16 so that the nail fin can be folded in the manner illustrated by the dashed line depiction in Figure 2 to a position "along the side of frame 11" so that the window and nail fin occupy less space when the window and nail fin are placed in a carton for shipping (Col. 3, lines 30-37).

The examiner is of the opinion that Kessler discloses a nail fin as claimed except that the Kessler fold line does not allow the nail fin to lie flush against the window frame.

However, the examiner stated:

... as Kessler states the fold line is so positioned that little additional space is occupied which is the same result as applicant is trying to achieve. Therefore, it is deemed an obvious matter of design choice to have placed the fold line closer to the frame than to have the fold line where Kessler has placed his because booth [sic] [K]essler and applicant strive to achieve the same result.  
[Examiner's Answer at pages 2-3].

We do not agree. We find nothing in Kessler that teaches or suggests to a person of ordinary skill in the art locating the fold line 16 closer to the frame. Rather, Kessler discloses at Col. 3 lines 38-42:

Wing or flange 19<sup>2</sup> is formed integrally with the nailing section 14 of the nailing fin and extends out over the hinge section... In this arrangement,

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<sup>2</sup> Flange 19 is improperly labeled "18" in Figure 2. In accordance with Kessler (Col. 3, lines 1-3) 18 is the tongue portion.

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protection is provided for the hinge section when the  
nailing fin is in place.

In view of this disclosure, we are of the opinion that one  
of ordinary skill in the art would have been taught by Kessler  
that the hinge or fold line 16 should remain positioned opposite  
flange 19 so that hinge or fold line 16 would be protected when  
the nail fin is in place, which teaches away from the  
modification proposed by the examiner.

The decision of the examiner rejecting claim 13 under 35  
USC § 103 is reversed.

REVERSED

	)	
HARRISON E. McCANDLISH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
WILLIAM E. LYDDANE	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

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